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114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-431

A BILL TO PROVIDE THAT THE PUEBLO OF SANTA CLARA MAY LEASE FOR
99 YEARS CERTAIN RESTRICTED LAND, AND FOR OTHER PURPOSES

DECEMBER 20, 2016.—Ordered to be printed

Filed, under authority of the order of the Senate of December 10, (legislative day,
December 9), 2016

Mr. BARRASSO, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 2916]

The Committee on Indian Affairs, to which was referred the bill (S. 2916) to provide that the pueblo of Santa Clara may lease for 99 years certain restricted land, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill, S. 2916, is to amend the *Long Term Leasing Act* to clarify that the Pueblos of Santa Clara and Ohkay Owingeh are authorized to lease their respective tribal trust and restricted fee lands for up to 99 years. Many of the tribal lands within these Pueblos' respective reservations are held in restricted fee simple, in addition to those lands that are held in trust by the United States.

NEED FOR LEGISLATION

The bill, S. 2916, would allow the Pueblos of Santa Clara and Ohkay Owingeh to lease certain types of land located within the Santa Clara Pueblo Grant for purposes of economic development. This legislation would make clear under the *Long Term Leasing Act* that these Pueblos may lease restricted fee lands up to 99 years.

BACKGROUND

The Pueblo of Santa Clara and the Pueblo of Ohkay Owingeh have unique histories relative to the status of their lands.¹ The Pueblo of Santa Clara is located in New Mexico beside the Rio Grande River north of the city Santa Fe, near the city of Española. According to the Department of the Interior, the Pueblo has approximately 2,800 enrolled members.² Currently, the Pueblo of the Santa Clara reservation is comprised of land granted from the Spanish by land grant,³ and reservation land established in 1905 by Executive Order.⁴ The land grant was confirmed by Congress on December 22, 1858⁵ and patented on November 15, 1909.⁶

The Pueblo of Ohkay Owingeh is located along the Rio Grande River 25 miles north of Santa Fe, New Mexico. According to the Department of the Interior, the Pueblo has approximately 2,723 enrolled members.⁷ In 1897, the Supreme Court ruled that Indians were not considered to be allotted settlers and reduced the size of the land grant to approximately 5,000 acres.⁸ Since that time, additional Ohkay Owingeh lands have been acquired.

On August 9, 1955, the *Long Term Leasing Act*⁹ was enacted to allow Indian tribes to lease land to non-federal government entities for a period of 25 years. However, several amendments have been enacted to allow approximately fifty tribes to lease lands for a period of up to 99 years. In 1992, the Act was amended to authorize leasing of up to 99 years for lands held in trust for the Pueblo of Santa Clara¹⁰ and for the Pueblo of Ohkay Owingeh in 2011.¹¹ But these amendments failed to include the long-term leasing authority for the restricted fee lands of these Pueblos. This bill would authorize such long-term leasing for these Pueblo lands.

LEGISLATIVE HISTORY

The bill, S. 2916, was introduced May 11, 2016, by Senator Udall and co-sponsored by Senator Heinrich. The Committee held a legislative hearing on the bill on May 18, 2016, at which the Director of the Bureau of Indian Affairs testified in support of S. 2916.

¹The Pueblos of Santa Clara and Ohkay Owingeh had ancestral lands located in what is now the State of New Mexico. After the countries of Spain and Mexico laid claim to lands in the area, community land grants were issued to the Pueblos. The history of the grants and Pueblo land status vis-a-vis the Federal trust responsibility is discussed in greater detail in other Federal agency documents as well as Federal statutes and court cases. *See e.g.*, U.S. Department of Interior. Office of Indian Affairs. Pueblo of Santa Clara Land Status. A Report prepared by the Land Division United Pueblos Agency. Albuquerque, New Mexico. April 1, 1940, at 23; U.S. Gov't Accountability Office, GAO-01-951, Treaty of Guadalupe Hidalgo Definition and List of Community Land Grants in New Mexico 7 (2001); 583 Stat. 851-854 (1891); 25 U.S.C. § 177, 43 Stat. 636, June 7, 1924; S. Rep. No. 492, 68th Cong., 1st Sess., at 5 (1024); United States v. Sandoval. 231 U.S. 28 (1913).

²Department of the Interior. Bureau of Indian Affairs. What We Do. <http://www.bia.gov/WhoWeAre/RegionalOffices/Southwest/What/index.htm>. (Last reviewed on August 23, 2016).

³*See* U.S. Gov't Accountability Office, GAO-01-951, Treaty of Guadalupe Hidalgo Definition and List of Community Land Grants in New Mexico 3 (2001).

⁴Exec. Order No. XXVI (1905).

⁵11 Stat. 374 (1958).

⁶U.S. Department of Interior. Office of Indian Affairs. Pueblo of Santa Clara Land Status. A Report prepared by the Land Division United Pueblos Agency. Albuquerque, New Mexico. April 1, 1940, p-23.

⁷Department of the Interior. Bureau of Indian Affairs. What We Do. <http://www.bia.gov/WhoWeAre/RegionalOffices/Southwest/What/index.htm>. (Last reviewed on August 23, 2016).

⁸U.S. v. Sandoval, 167 U.S. 278 (1897).

⁹Act of August 9, 1955 (codified at 25 U.S.C. 415).

¹⁰Act of October 24, 1992, Pub. L. No. 102-497, 106 Stat. 3256.

¹¹Act of January 4, 2011, Pub. L. No. 111-381, 124 Stat. 4133.

On June 8, 2016, the Committee held a duly called business meeting at which the bill was considered. No amendments were filed to the bill. The Committee favorably reported the bill by voice vote.

The companion bill, H.R. 4255, was introduced on December 15, 2015, by Representative Ben Ray Luján and was co-sponsored by Representative Michelle Lujan. It was referred to the Subcommittee on Indian, Insular, and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives. There has been no further action taken on the bill. The bills differ in one significant respect. The Senate bill, S. 2919, allows leases up to 99 years on tribal trust and restricted fee land for both the Pueblos of Santa Clara and Ohkay Owingeh, whereas H.R. 4255 would only allow leases up to 99 years on tribal trust and restricted fee land for only the Santa Clara Pueblo.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1

This section amends the Act of August 9, 1955 (commonly known as the *Long Term Leasing Act*) by allowing the Ohkay Owingeh Pueblo and the Pueblo of the Santa Clara to make leases for up to 99 years and other technical corrections.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated

AUGUST 8, 2016.

Hon. JOHN BARRASSO,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2916, a bill to provide that the pueblo of Santa Clara may lease for 99 years certain restricted land, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

S. 2916—A bill to provide that the pueblo of Santa Clara may lease for 99 years certain restricted land, and for other purposes

S. 2916 would authorize the pueblo of Santa Clara and the Ohkay Owingeh pueblo to lease tribal lands for up to 99 years. In general, under current law, the tribes can lease tribal lands to schools, businesses, and public entities for 25-year terms.

CBO estimates that implementing S. 2916 would have no significant impact on the federal budget. Any additional proceeds from such leases would accrue to the owners of the land and would have no effect on the federal budget. Enacting S. 2916 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

CBO estimates that enacting S. 2916 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2916 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The pueblo of Santa Clara and the Ohkay Owingeh pueblo would benefit from provisions in the bill allowing them to lease land for up to 99 years, regardless of the trust status of the land.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Rachel Austin (for intergovernmental mandates). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 2916.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2916 will have a minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW (CORDON RULE)

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes to existing law made by S. 2916, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and new matter is printed in italic):

(a) AUTHORIZED PURPOSES; TERM; APPROVAL BY SECRETARY.— Any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Aqua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the “Santa Ana Pueblo Spanish Grant”), the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, land held in trust for the Coquille Indian Tribe, land held in trust for the Confederated Tribes of Siletz Indians, land held in trust for the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, land held in trust for the Klamath Tribes, and land held in trust for the Burns Paiute Tribe, the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Confederated Tribes of the Umatilla Indian Res-

ervation, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of Indians, [the] pueblo of Cochiti, *Ohkay Owingeh pueblo*, the pueblo of Pojoaque, *the pueblo of Santa Clara*, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, the Yavapai-Prescott Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the [the] lands comprising the Moses Allotment Numbered 8 and the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, and lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians, land held in trust for the Prairie Band Potawatomi Nation, lands held in trust for the Cherokee Nation of Oklahoma, land held in trust for the Fallon Paiute Shoshone Tribes, [lands held in trust for the Pueblo of Santa Clara,] lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, and [lands held in trust for Ohkay Owingeh Pueblo] which may be for a term of not to exceed ninety-nine years, and except leases of land held in trust for the Morongo Band of Mission Indians which may be for a term of not to exceed 50 years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of

neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

